In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1460

FAIRH RIGGS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that federal marshals at an airport had no reasonable grounds to stop her to ask for identification, and thus that evidence obtained as a result of that stop should have been suppressed.

After a jury-waived trial in the United States District Court for the Eastern District of New York, petitioner was convicted of having possessed with intent to distribute approximately two kilograms of heroin in violation of 21 U.S.C. 841(a)(1). She was sentenced to seven years' imprisonment. The court of appeals affirmed (Pet. App. A30).

1. The evidence received at petitioner's pre-trial suppression hearing, which by stipulation also constituted the evidence at trial, is detailed in the comprehensive opinions of the district and circuit courts (Pet.

App. A4-A15, A31-A34). Briefly, Federal Marshals Huttick and O'Flaherty stopped petitioner and asked for identification as petitioner was boarding an American Airlines flight from New York's La Guardia Airport to Detroit on September 26, 1971. Petitioner, whose airline ticket bore the name "Miss F. Riggs," set her camera case on the floor and opened her purse slightly to produce a Detroit utility bill addressed to "Farah Jackson." When O'Flaherty asked for better identification, petitioner opened her purse to its full width, enabling Huttick to observe a clear plastic bag with a white substance inside which Huttick believed to be heroin, and pulled out a letter from the utility company addressed to "Farah Jackson." O'Flaherty then opened the camera case and observed two more clear plastic bags containing white powder. After field tests confirmed that the plastic bags in petitioner's purse and camera case contained heroin, petitioner was arrested (Pet. App. A12-A14).

Marshals Huttick and O'Flaherty had approached petitioner shortly after Huttick was informed at about 1:40 by American Airlines Supervisor Ruckel "that American Airlines had received information from the Port Authority Police to be on the lookout for a young Negro woman suspected of trafficking in narcotics and possibly carrying a weapon; that a young Negro woman meeting the description transmitted had just arrived at Gate 9 and checked in for passage on a flight to Detroit scheduled to depart at approximately 1:55 P.M.; that the flight was ready for boarding; that the suspect was a selectee under the F.A.A. 'behavioral profile' system * * *" (Pet. App. A9-A10).[1] A deputy marshal

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[1] On the way to Gate 9, Huttick informed O'Flaherty, who earlier that day had read a notice on the U.S. Marshals' bulletin

had previously told Huttick that a young black woman, wearing a bright orange coat and gold hoop earrings, had flown to La Guardia that day from Detroit, was suspected of coming to New York to buy narcotics, and might possibly be carrying a weapon (Pet. 18-19; Pet. App. A8-A9).[2] The marshals noted that petitioner fit the description of the suspect (Pet. App. A12).

2. Petitioner's contention that Federal Marshals Huttick and O'Flaherty had insufficient reason to stop her to ask for identification is belied by the record. Huttick and O'Flaherty knew that a woman, fitting petitioner's description, was suspected of trafficking in narcotics and might be carrying a concealed weapon; and that petitioner fit the behavioral profile of a would-be hijacker. Therefore, even apart from the collective information possessed by all the investigators in the instant case (see opinion of the court of appeals, Pet. App. A31-A33),[3] Huttick and O'Flaherty were justified in requesting identification from petitioner. See *Adams*

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board to be on the lookout for a negro woman arriving from Detroit wearing a brilliant orange coat and gold earrings and carrying a large amount of money, that the woman the Port Authority Police were looking for was ready to board the American Airlines flight at Gate 9 (Pet. App. A11).

[2] The basis for the suspicions of the Port Authority Police are described in the opinions below (Pet. App. A4-A9, A31-A33).

[3] Since probable cause for a search and seizure is determined by the collective information available when the decision to search is made and is not tested solely by the personal observations of the officers directly participating in the search (see, *e.g.*, *United States* v. *Sheppard*, 455 F. 2d 1081, 1083 (C.A. 10); *United States* v. *Stratton*, 453 F. 2d 36 (C.A. 8)), reasonable suspicion for a brief stop and limited questioning is not determined solely by the personal observations of the officers who actually stop and question the suspect.

v. *Williams*, 407 U.S. 143, 146; *Gaines* v. *Craven*, 448 F. 2d 1236 (C.A. 9); *United States* v. *Unverzagt*, 424 F. 2d 396, 398 (C.A. 8). As noted by this Court in *Adams* v. *Williams, supra*, 407 U.S. at 145: "The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape." And when, in response to the marshals' initial request for identification, petitioner presented identification different than the name on her ticket, the marshals were justified in requesting further identification—a request that led to the opening of the purse and the "plain view" of the bag of heroin (Pet. App. A37). At this point the marshals had ample probable cause to believe that petitioner was in fact carrying the reported narcotics, and were justified in immediately opening the camera case she was carrying with her.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1973.